

Office of the Secretary of Labor

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make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

Other acts such as the Defense Base Act, 42 U.S.C. 1651, adopt section 23(a) of the Longshore and Harbor Workers' Compensation Act by reference. In addition 20 CFR 725.455(b) provides as follows with respect to the Black Lung Benefits Act, 30 U.S.C. 901:

Evidence. The administrative law judge shall at the hearing inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. The administrative law judge shall receive into evidence the testimony of the witnesses and parties, the evidence submitted to the Office of Administrative Law Judges by the deputy commissioner under § 725.421, and such additional evidence as may be submitted in accordance with the provisions of this subpart. The administrative law judge may entertain the objections of any party to the evidence submitted under this section.

Section 18.1101(c) provides that these rules do not apply to the extent inconsistent with, in conflict with, or to the extent a matter is otherwise specifically provided for by an Act of Congress or by a rule or regulation of specific application prescribed by the United States Department of Labor pursuant to statutory authority. Whether section 23(a) and § 725.455(b) are in fact incompatible with these rules, while unlikely for various reasons including their lack of specificity, is nevertheless arguable.

Without regard to section 23(a) and § 725.455(b), various other considerations support the conclusion to exclude hearings under Longshore, Black Lung, and related acts from coverage of these rules at this time. Longshore, Black Lung, and related acts involve entitlements. Claimants in such hearings benefit from proceeding pursuant to the most liberal evidence rules that are consistent with the orderly administration of justice and the ascertainment of truth. Claimants in such hearings on occasion appear *pro se*. While the modifications made by these rules are clearly designed to further liberalize the already liberal Federal Rules of Evidence, it is nevertheless unclear at this time whether even conformity with minimal requirements with respect to the introduction of evidence would present a significant barrier to the successful prosecution of meritorious claims. Rather than speculate as to the impact adoption of these rules would have upon such entitlement programs, it was

decided to exclude hearings involving such entitlement programs from coverage of these rules. It is anticipated that application of these rules to hearings involving such entitlement programs will be reconsidered in the future following careful study. Notice that the inapplicability of these rules in such hearings at this time is specifically stated in § 18.1101(b)(2) to be without prejudice to the continuation of current practice with respect to application of rules of evidence in such hearings.

[55 FR 13229, Apr. 9, 1990; 55 FR 24227, June 15, 1990]

PART 19—RIGHT TO FINANCIAL PRIVACY ACT

Sec.

19.1 Definitions.

19.2 Purpose.

19.3 Authorization.

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AUTHORITY: Sec. 1108, Right to Financial Privacy Act of 1978, 92 Stat. 3697 *et seq.*, 12 U.S.C. 3401 *et seq.*, (5 U.S.C. 301); and Reorganization Plan No. 6 of 1950.

SOURCE: 52 FR 48420, Dec. 22, 1987, unless otherwise noted.

§ 19.1 Definitions.

For purposes of this regulation, the term:

(a) *Financial institution* means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumer Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, consumer financial institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) *Financial record* means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) *Person* means an individual or a partnership of five or fewer individuals.

(d) *Customer* means any persons or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for

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whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.

(e) *Law enforcement inquiry* means a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(f) *Departmental unit* means those offices, divisions, bureaus, or other components of the Department of Labor authorized to conduct law enforcement inquiries.

(g) *Act* means the Right to Financial Privacy Act of 1978.

§ 19.2 Purpose.

The purpose of these regulations is to authorize Departmental units to request financial records from a financial institution pursuant to the formal written request procedure authorized by section 1108 of the Act, and to set forth the conditions under which such requests may be made.

§ 19.3 Authorization.

Departmental units are hereby authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(a) No administrative summons or subpoena authority reasonably appears to be available to the Departmental unit to obtain financial records for the purpose for which the records are sought;

(b) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(c) The request is issued by the Assistant Secretary or Deputy Under Secretary heading the Departmental unit requesting the records, or by a senior agency official designated by the head of the Departmental unit. Officials so designated shall not delegate this authority to others;

(d) The request adheres to the requirements set forth in § 19.4; and

(e) The notice requirements set forth in section 1108(4) of the Act, or the requirements pertaining to delay of notice in section 1109 of the Act are satis-

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fied, except in situations where no notice is required (e.g., section 1113(g)).

§ 19.4 Contents of request.

The formal written request shall be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by an issuing official of the requesting Departmental unit, as specified in § 19.3(c). It shall set forth that official's name, title, business address and business phone number. The request shall also contain the following:

(a) The identity of the customer or customers to whom the records pertain;

(b) A reasonable description of the records sought;

(c) Any other information that the issuing official deems appropriate, e.g., the date on which the requesting Departmental unit expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual to whom disclosure is to be made, etc.

(d) In cases where customer notice is delayed by a court order, a copy of the court order shall be attached to the formal written request.

§ 19.5 Certification.

Prior to obtaining the requested records pursuant to a formal written request, a senior official designated by the head of the requesting Departmental unit shall certify in writing to the financial institution that the Departmental unit has complied with the applicable provisions of the Act.

PART 20—FEDERAL CLAIMS COLLECTION

Subpart A—Disclosure of Information to Credit Reporting Agencies

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20.1 Purpose and scope.

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20.4 Determination of delinquency; notice.

20.5 Examination of records relating to the claim; opportunity for full explanation of the claim.

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20.7 Review of the obligation.